

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Investigation by the Department of
Telecommunications and Cable on its own
Motion into Accounting Practices and
Recordkeeping of Telecommunications Carriers

D.T.C. 18-3

COMMENTS OF DEPARTMENT OF PUBLIC UTILITIES

TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND	1
II.	DISCUSSION	2
A.	The DPU supports state-level reporting requirements for entities within the DTC’s jurisdiction but urges implementation of more stringent requirements applicable to Verizon.	2
B.	Due to inherent differences in the accounting systems and trends reflected in publicly-available data, not implementing both GAAP- and USOA-based reporting for Verizon pole data could result in future increases to pole attachment rates.	5
C.	Permitting Verizon to establish pole attachment rates that rely on GAAP-based data will result in disparities and confusion involving attachment rates on poles jointly-owned with the EDCs, could disrupt existing agreements, and could result in unintended cost increases.	13
D.	Joint ownership of utility poles by Verizon, EDCs, and MLPs necessitates measured action for the type of pole data reported by Verizon, and the DPU looks forward to conducting a joint proceeding to address a uniform approach among pole owners.	17
E.	The DPU suggests revisions to the proposed Pole Owner Report and urges the DTC to post any filed Reports to its website.	19
III.	CONCLUSION	22

I. INTRODUCTION AND BACKGROUND

The Department of Public Utilities (“DPU”) submits these comments in response to the Notice of Proposed Requirements and Further Request for Comment (“Notice”) issued by the Department of Telecommunications and Cable (“DTC”) in the above-captioned proceeding. Through this Notice, the DTC proposes to implement a new reporting requirement through which certain telecommunications pole¹ owners would file a Pole Owner Report (“Pole Owner Report” or “Report”) annually by March 1 with the DTC.² The DTC attaches a copy of the proposed Report as an Exhibit to the Notice and requests comment on multiple items, including: (1) how “telecommunications pole owners” should be defined; (2) implementation of certain record retention requirements; (3) whether to make Reports filed with the DTC publicly available by providing copies of such documents upon request; and (4) the data necessary to evaluate pole attachment rates pursuant to the Massachusetts Formula.³ Additionally, the DTC states that it does not propose to impose requirements on the accounting methods that telecommunications pole owners may use to complete the proposed Pole Owner Report.⁴

The DPU offers the following comments for the DTC’s consideration.^{5,6}

¹ All references to poles in these comments include ducts, conduits, and rights of ways, all as defined in G.L. c. 166, § 25A.

² Notice at 1, 5-6, 16-17.

³ Notice at 14-17.

⁴ Notice at 12.

⁵ The DPU’s silence on any issues or arguments raised in this proceeding should not be construed as acquiescence.

⁶ The DPU has previously submitted two sets of initial and reply comments in response to prior DTC inquiries in this proceeding. For ease of reference, the DPU attaches these prior comments as

II. DISCUSSION

- A. The DPU supports state-level reporting requirements for entities within the DTC's jurisdiction but urges implementation of more stringent requirements applicable to Verizon.

Due to the Federal Communication Commission's ("FCC's") elimination of certain accounting and pole attachment reporting requirements specific to Verizon New England, Inc. ("Verizon")⁷ and other incumbent local exchange carriers ("ILECs"), and to ensure the continued public availability of Massachusetts-specific pole data, the DTC proposes to establish a new state-level annual reporting requirement for telecommunications pole owners.⁸ The DTC's proposals indicate that it may impose pole-related reporting requirements on pole owners other than Verizon who are subject to its jurisdiction.⁹ The DTC states that it intends to improve the efficiency of its pole attachment adjudications and the specificity of its rate determinations.¹⁰

The DPU supports the DTC's exercise of its jurisdiction with respect to pole owners over which the DTC has regulatory authority, and we recognize that a need exists for Verizon to begin reporting publicly available, state-level data with the DTC.¹¹ In addition, Verizon, investor-owned electric distribution companies ("EDCs"), and municipal light plants

attachments to the instant filing, identified as: (1) Attachment A (July 25, 2018 comments on Notice of Inquiry); (2) Attachment B (August 9, 2018 reply comments on Notice of Inquiry); (3) Attachment C (November 21, 2019 comments on Further Request for Comment); and (4) Attachment D (December 19, 2019 reply comments on Further Request for Comment).

⁷ References to Verizon herein also incorporate its predecessors, including New England Telephone and Telegraph Company.

⁸ Notice at 4, 7-8.

⁹ Notice at 16-17.

¹⁰ Notice at 8.

¹¹ See Att. B at 2-3; Att. C at 2-3.

(“MLPs”) that provide electric service are not the only entities that own utility poles located in public rights-of-way, and some level of pole data from these other entities may be informative.¹² There does not seem to be an immediate need for this data, however, as reflected in the history of pole complaints filed with our agencies, the data within Verizon’s control, and the level of pole and conduit plant-in-service owned by Verizon.

In particular, pole attachment complaints filed with the DTC and our shared predecessors have, historically, been limited in number and involved complaints against Verizon, EDCs, or MLPs. Since our agencies’ division in 2007, the DTC has received and adjudicated only a single pole attachment complaint against a competitive carrier, and the complaint did not involve a dispute over the rates charged. Rather, the issue involved a denial of access and whether competitive local exchange carriers (“CLECs”) qualified as “utilities” under the definitions provided in G.L. c. 166, § 25A, and 220 CMR 45.00 et seq.¹³ To the extent that a pole attachment rate complaint is submitted in the future against a non-ILEC pole owner under the DTC’s jurisdiction involving the rates charged, the existing pole attachment regulations and adjudicatory process shared between our agencies should

¹² See Double Utility Poles, D.T.E. 03-87, Verizon Double Pole Report for the Period November 1, 2021 through April 30, 2022, New Pole Summary Tab (May 18, 2022) (reporting double pole data on behalf of itself, National Grid, NSTAR Electric, and Fitchburg Gas and Electric Company d/b/a Unitil (“Unitil”), and reflecting joint pole ownership including with cable television and other third-party attachers) (“Verizon May 18, 2022 Double Pole Report”); NextG Networks, D.T.C. 08-5, at 3-4, 12 (2009) (findings involve a pole attachment complaint brought against a CLEC); Massachusetts Department of Revenue Division of Local Services, Centrally Valued Utilities’ Fiscal Year 2022 Telephone Values – Poles, Wires & Underground Conduits, Wires & Pipes, available at <https://www.mass.gov/lists/centrally-valued-utilities-telephone-and-pipeline-companies> (last viewed June 3, 2022) (“DLS FY 2022 Telephone Values”) (identifying multiple telephone companies other than Verizon that report pole and/or conduit ownership within the Commonwealth). The DPU provides a copy of the DLS FY 2022 Telephone Values, entitled “FY 2022 Landline Telephone Personalty” as Attachment E to these comments.

¹³ D.T.C. 08-5, at 1-2, 10-12.

provide sufficient access to the data that would be necessary to determine whether a rate is just and reasonable.¹⁴

Verizon, however, owns and controls a much larger share of telephone utility plant in the Commonwealth than competitive providers and has been historically subject to more stringent reporting requirements and service obligations. For instance, Verizon's telephone utility plant (i.e., poles, wires, and underground conduits, wires, and pipes) for fiscal year 2022 constituted approximately 80 percent, or more than three quarters,¹⁵ of the valuation attributed to telephone utility plant reported by telephone companies to the Massachusetts Department of Revenue's Division of Local Services. That figure remains nearly 100 percent in certain towns in the Commonwealth.¹⁶ Additionally, as the dominant telephone service provider and sole residential carrier of last resort ("COLR") in all but four towns in the Commonwealth,¹⁷ Verizon was subject to USOA-based reporting requirements for decades at both the federal and state level, and competitive providers relied on this data as reported to the FCC to calculate Verizon's pole attachment rates.¹⁸

¹⁴ In pole complaint proceedings, data for determining pole attachment rates should be derived from publicly available reports filed with state or regulatory agencies. 220 CMR 45.04(2); Joint Investigation by the DPU & the DTC, on their own motions, instituting a rulemaking pursuant to Exec. Order No. 562 to Reduce Unnecessary Regulatory Burden, G.L. c. 30A, § 2, 220 CMR 2.00, & 207 CMR 2.00, to amend 220 CMR 45.00, D.P.U. 19-76-A/D.T.C. 19-4-A at 17-18, 20 (December 7, 2021).

¹⁵ $\$2,251,706,000 / \$2,807,298,200 = 0.8021$ Source: Att. E, DLS FY 2022 Telephone Values.

¹⁶ See Att. E, DLS FY 2022 Telephone Values.

¹⁷ See Verizon New England, D.T.E. 01-31, Phase II Order at 99-101 (April 11, 2003); IntraLata Competition, D.P.U. 1731, at 73-76 (1985); D.T.C. 2021 Annual Report at 6, available at <https://www.mass.gov/doc/fy-2021-annual-report/download> (last viewed June 3, 2022).

¹⁸ See Greater Media, D.P.U. 91-218, at 40-41 (April 17, 1992); D.T.C. 18-3, New England Cable and Telecommunications Association, Inc. ("NECTA") July 25, 2018 Comments at 6-7.

Based on these considerations, coupled with the FCC's elimination of Verizon's Massachusetts pole data reporting requirements at the federal level discussed in further detail in the DPU's prior comments,¹⁹ the DPU at this time recommends that the DTC consider more stringent reporting requirements for Verizon than other telecommunications carriers and other to-be-defined telecommunications pole owners.

- B. Due to inherent differences in the accounting systems and trends reflected in publicly-available data, not implementing both GAAP- and USOA-based reporting for Verizon pole data could result in future increases to pole attachment rates.

The DTC states that it does not propose to impose requirements on the accounting methods that telecommunications pole owners may use to complete the proposed Pole Owner Report, in part, because existing differences in USOA-based data between industries would not achieve the DPU's goal of ensuring that pole owners in Massachusetts report financial data pursuant to the same accounting rules.²⁰ The DPU respectfully urges the DTC to gather the particular data to be reported by Verizon and require, at a minimum, both USOA- and GAAP-based data reporting at this time for purposes of the proposed Pole Owner Report. As we previously stated, the DPU would support a requirement that ILECs like Verizon report two versions of pole and conduit data utilizing both inputs.²¹ If the DTC institutes a Report that allows flexibility in the inputs utilized by Verizon and does not reaffirm USOA-based reporting for ILECs operating in the Commonwealth in some capacity, or takes no action, effectively permitting Verizon and other ILECs to continue to voluntarily report

¹⁹ See generally Atts. A-D.

²⁰ Notice at 11-12.

²¹ Att. C at 3.

Massachusetts-specific data to the FCC, then this creates regulatory uncertainty in relation to the rates that may ultimately be charged for telecommunications and cable attachments to ILEC-owned poles in the Commonwealth.²²

While Verizon may have voluntarily retained the same pole attachment rates since 2010,²³ similar to its voluntary reporting of Massachusetts-based data with the FCC, it is under no obligation to retain these rates.²⁴ Similar to the concerns about relying on voluntary filings with the FCC for pole data reporting, the DTC should also not derive its proposed reporting requirements, in part, on the fact that a company has voluntarily retained the same rates for over a decade. Thus, the DPU strongly encourages the DTC to implement USOA- and GAAP-based reporting for Verizon's Massachusetts pole data. Through review of that data, we can ensure that there is appropriate information to determine whether increases in pole attachment rates are just and reasonable. To the extent that future rate increases by Verizon or other ILECs necessitate DTC adjudication of related pole attachment complaints arising from those increases, the DTC would provide much-needed clarity to attachers and ILEC pole owners if it established clear parameters now for these ILECs built

²² As reflected in the DPU's findings in EDC base distribution rate proceedings involving pole attachment revenues, the DPU generally anticipates that the number of pole attachments and pole attachment rates will increase over time. NSTAR Electric Company and Western Massachusetts Electric Company, D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 65 n.36 (2017); Fitchburg Gas and Electric Light Company, D.P.U. 11-01/D.P.U. 11-02, at 167-168 (2011); Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 09-39, at 120-121 (2009).

²³ Notice at 12, citing D.T.C. 18-3, Verizon July 25, 2018 Comments at 4.

²⁴ This may be a result of broader set of factors, including existing negotiated contracts and related terms. Similar to the process in federal-default states and as reflected in the complaint process in our agencies' shared regulations, the DPU anticipates that pole attachment rates are set in the first instance through private negotiations using publicly-available cost data reported by carriers. See 220 CMR 45.04(2); D.P.U. 91-218, at 13, 33-34; Accounting Order, 32 FCC Rcd. at 1735, 1745, ¶ 32 (2017). Many of the Massachusetts pole attachment regulations originally mirrored the regulatory provisions enacted by the FCC. D.P.U. 91-218, at 28.

on longstanding requirements²⁵ and existing data rather than retroactively applying parameters.

There is no dispute in the instant proceeding that calculating potential rates using GAAP rather than USOA results in noticeable differences in the resulting numbers.²⁶ In eliminating USOA-based reporting for price cap ILECs like Verizon, the FCC acknowledged and expressed concern about the potential for rate shock involving pole attachment rates, noting that the possible rate differential is due to a number of factors, including depreciation rates, cost of removal, and return on investment.²⁷ The FCC also observed that pole attachment rates are set in the first instance through private negotiation using cost data reported by carriers.²⁸ If the starting point for pole attachment negotiations is a higher number, then the likelihood of a higher resulting rate increases. As a result of this potential rate shock discussed by the FCC in its Accounting Order, and as acknowledged by commenters in the instant proceeding, the FCC conditioned the adoption of GAAP for pole reporting by price cap ILECs in federal-default states on compliance with one of two framework options to mitigate any disruption in pole attachment rates resulting from the carrier's election – either (1) for a period of 12 years, calculate an implementation rate difference (“IRD”) between the attachment rates calculated by the price cap carrier under USOA and under GAAP as of the last full year preceding the carrier's initial opting-out of

²⁵ The DPU previously argued extensively as to why Verizon remains subject to USOA-based reporting in Massachusetts and incorporates by reference those arguments here. See generally Atts. A-D.

²⁶ See Att. D at 2; D.T.C. 18-3, Verizon November 21, 2019 Comments at 3-4 & Exhs. 1-6; NECTA December 19, 2019 Comments at 2-3 & Exh. 1.

²⁷ Accounting Order, 32 FCC Rcd. at 1746, ¶ 35.

²⁸ Accounting Order, 32 FCC Rcd. at 1745, ¶ 32.

USOA accounting requirements, or (2) comply with GAAP accounting for all purposes other than those associated with setting pole attachment rates while continuing to use USOA account and procedures necessary to establish pole attachment rates, with the ability to opt into GAAP accounting within 12 years.²⁹ Although it acknowledges comments addressing the issue, the DTC does not propose any precautions or mitigation measures to avoid rate shock at this time.³⁰ The DTC instead determined that if rate shock or other unreasonable pole attachment rates arise from this decision it will reexamine the decision and exercise its authority to ensure just and reasonable rates under G.L. c. 166 c. § 25A and 220 CMR 45.00.³¹ The DPU welcomes the opportunity to assist the DTC in any exercise to ensure just and reasonable rates.

Our review of publicly-available data reported with the FCC reflects the potential rate impacts applicable to telecommunications and cable attachers. For illustrative purposes, DPU staff compiled data reported annually to the FCC's electronic comment filing system ("ECFS") by Verizon for its Massachusetts service territory for calendar years 2014 through 2021,³² and derived possible rates for each year reported utilizing the calendar year 2018 calculations relied on by Verizon in its November 21, 2019 comments in the instant proceeding. The DPU provides a working Excel spreadsheet, with formulae and references

²⁹ Accounting Order, 32 FCC Rcd. at 1746-1747, ¶¶ 36-37.

³⁰ Notice at 9-10, 13.

³¹ Notice at 13.

³² The DPU accessed this data through the FCC's ECFS at <https://www.fcc.gov/ecfs/search/search-filings> and typing "86-182" into the "Specify Proceeding" line and "Verizon" into the "Name of Filer" line. This provides Verizon's annual filings in that proceeding made during 2015 through 2022 for calendar years 2014 through 2021.

intact, as Attachment F to these comments. If pole attachment rates were calculated using the data reported by Verizon without the use of an illustrative IRD,³³ the accounting base shift would have resulted in an approximately 39 percent rate increase between 2017 to 2018, i.e., from \$8.14 to \$11.34 for telecommunications attachments and \$8.13 to \$11.32 for cable attachments.³⁴ Compared to the pole attachment rates calculated using USOA-based data reported for 2018 in the instant proceeding, the rate increase would have been approximately 15 percent, i.e., from \$8.14 to \$9.34 for telecommunications attachments and \$8.13 to \$9.33 for cable attachments.³⁵ Based on the data inputs reported by Verizon, the possible telecommunications and cable attachment rates have increased annually since 2017 and, further, are higher than they would be if USOA reporting was utilized. For companies seeking to attach to thousands of poles, the costs resulting from use of varying accounting methods could diverge. Again, the DPU welcomes any opportunity to assist the DTC in future efforts to ensure just and reasonable rates.

While variations may exist between the USOAs relied upon by different types of providers,³⁶ such variation is inevitable because of the varied histories and industries in which telephone companies, EDCs, and MLPs (as well as the water and gas distribution companies under the DPU's jurisdiction) operate and the services they provide.³⁷ The DPU has long

³³ Although Verizon provided calculations using an IRD, such a mechanism does not currently exist in Massachusetts.

³⁴ Att. F at 3 (Pole Att. Cal. tab); D.T.C. 18-3, Verizon November 21, 2019 Comments, Exhs. 1-6.

³⁵ Att. D at 1-2; Att. F; D.T.C. 18-3, Verizon November 21, 2019 Comments, Exhs. 4-10.

³⁶ See Notice at 11.

³⁷ In 1981, the DPU adopted FERC's USOA for EDCs, with several modifications to incorporate specific Massachusetts requirements (mostly affecting allowance for funds used during construction and accounting for sales of property). Uniform System of Accounts for Electric Companies, D.P.U. 799

prescribed accounting systems for companies under its jurisdiction in order to ensure accounting uniformity, as well as facilitate the DPU's ability to exercise its general supervisory authority over the industries that it regulates.³⁸ While GAAP reporting attempts to standardize and regulate definitions, assumptions, and methods used in accounting across all industries, the DPU's USOAs allow costs to be sorted and categorized to provide the DPU with information on utility operations and aid in the review of utility costs.^{39,40} Consequently, the Commonwealth has historically declined to permit companies under its jurisdiction to substitute GAAP-based reporting for the relevant USOA.⁴¹

Several examples of these differences pertain to the reporting of asset retirement obligations ("AROs") and capitalization accounts. For example, Statement of Financial

(1981); 220 CMR 51.01 through 51.03. The FERC USOA for EDCs is codified at 18 C.F.R. Ch. 1, part 101.

In contrast, MLPs are required to use the DPU's USOA for electric companies promulgated in 1961. 220 CMR 51.02(2)(a); Inspector General Advisory Ruling, D.T.E./D.P.U. 06-29, at 4 n.8 (2007). This difference is attributable to the need for certain balance sheet and income statement accounts that are required for MLP operations, but not otherwise provided for in FERC's USOA for EDCs.

Gas and water companies have their own distinct DPU accounting systems. 220 CMR §§ 50.00, 52.00. These particular USOAs are not at issue in this proceeding.

³⁸ See Reclassification of Accounts of Gas and Electric Companies, D.P.U. 4240-A (September 7, 1960); Reclassification of Accounts of Gas and Electric Companies, D.P.U. 4240-A, Introductory Letter (May 19, 1941); Reclassification of Accounts of Gas and Electric Companies, D.P.U. 104, Introductory Letter (May 27, 1921); see also Annual Returns, D.T.E. 03-76, Vote to Open Investigation (2003); Annual Returns, D.T.E. 02-13, Vote to Open Investigation (2002) (annual returns required of telecommunications providers not subject to rate regulation).

³⁹ The entry of a particular expense in accordance with a particular USOA does not establish either the reasonableness per se of the reported costs or the ratemaking treatment to be accorded to such costs. Because the ratemaking process takes into consideration many factors other than account balances, the fact that the DPU's USOA contains a particular category of cost does not imply any judgment as to the reasonableness of that cost in a given instance. See Boston Edison Company, D.P.U./D.T.E. 97-95, at 77-78 (2001); Reclassification of Accounts of Gas and Electric Companies, D.P.U. 4240, Introductory Letter (May 19, 1941); see also Boston Gas Company v. City of Newton, 425 Mass. 697, 706 (1997).

⁴⁰ See Boston Edison Company, D.P.U./D.T.E. 97-95, at 77 (2001); see also Boston Gas Company v. City of Newton, 425 Mass. 697, 706 (1997).

⁴¹ See Aquaria LLC, D.T.E. 04-76, at 22-24 (2005).

Accounting Standards Number 143, “Accounting for Asset Retirement Obligations” (“SFAS 143”), as well as its successor Financial Accounting Standards Board Accounting Standards Codification 410, “Asset Retirement and Environmental Obligations” (“ACO 410”), utilized in GAAP accounting requires companies to record a liability on their books for estimated future costs associated with AROs along with an offsetting asset, with their amortization over the period through the expected retirement date of the underlying asset. ASC 410-20 also requires that the asset be evaluated on its fair (i.e., estimated) value. Once the asset is removed from service, GAAP requires that the ARO be treated as an expense on the income statement, with accumulated depreciation derived from the estimated value of the asset.

In contrast, the USOA-Electric specifies that AROs associated with distribution plant are to be booked to Account 374, while AROs associated with general plant are to be booked to Account 399.1.⁴² The DPU has found that AROs represent balance sheet entries that do not represent plant in service and that these retirement-related costs have already been factored into the removal cost component of depreciation accrual rates. Thus, the DPU excludes AROs and their accumulated amortization from the calculation of rate base when establishing base distribution rates.⁴³

Additional examples of different reporting requirements pertain to long-term debt, premiums on common stock, goodwill, and equity contributions from parent companies.

⁴² 18 C.F.R. Pt. 101, Balance Sheet Chart of Accounts, Electric Plant Instructions, Sec. 10(B)(2).

⁴³ See Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 15-155, at 147-148 (2016); D.P.U. 09-39, at 103-104; Western Massachusetts Electric Company, D.T.E. 05-9, at 13 (2005).

Under GAAP, long-term debt payable within one year is classified as short-term debt for public reporting purposes.⁴⁴ While the investment community would certainly want to know whether a company has impending debt maturities that need to be repaid or refinanced, the DPU has found that the impending maturity date of a long-term debt instrument created and approved under the auspices of G.L. c. 164, § 14, does not convert that debt into a short-term obligation.⁴⁵ GAAP statements also consolidate various balance sheet accounts, including premiums on common stock, goodwill, and equity contributions from parent companies, into an aggregated premium balance for public reporting purposes. Fundamental ratemaking principles utilizing USOA, on the other hand, accord different treatments to these components, with premiums on common stock and equity contributions from parent companies included in a company's common equity balance, and goodwill being excluded.^{46,47}

With these considerations in mind, the differences between GAAP accounting and the USOA could affect the computation of carrying charges used to derive pole attachment rates. In particular, the difference in ARO treatment will affect accumulated depreciation

⁴⁴ Massachusetts Electric Company/New England Power Company, D.P.U. 20-61/D.P.U. 20-62, at 48 (2020); Fitchburg Gas and Electric Light Company, D.P.U. 15-80/D.P.U. 15-81, at 251-252 (2016); Blackstone Gas Company, D.P.U. 10-69, at 7-8 (2010).

⁴⁵ Commonwealth Electric Company, D.T.E. 02-51, at 6 (2002); Nantucket Electric Company, D.P.U. 91-106/138, at 96 (1991).

⁴⁶ See D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 617-618 (equity investment in affiliates, and accumulated other comprehensive income, such as gains and losses or investments and pension obligations, excluded); NSTAR Gas Company, D.P.U. 14-150, at 316-317 (2015) (shareholder equity infusions included); D.P.U. 09-39, at 338 (goodwill excluded); Southern Union Company, D.T.E. 04-36, at 9 n.5 (2004) (premiums on common stock included).

⁴⁷ The examples provided here are just a few that exist reflecting the differences between GAAP and USOA accounting methods that would ultimately impact the inputs used in calculating pole attachment rates.

calculations, and the differences in both the treatment of long-term debt and common equity balances will affect rate of return calculations. The DPU does not dispute the DTC's authority to establish different accounting methods, but rather seeks to highlight the variances between accounting and seeks to underscore the importance of comparing accounting methods. Therefore, due to the inherent differences in these accounting methods, the DPU encourages the DTC to maintain a dataset or conduct a study to track the use of GAAP-based reporting by Verizon to assess the reasonableness of rates in the future and minimize the impact of any action that may result in higher pole attachment rates than if USOA-based inputs are utilized.

- C. Permitting Verizon to establish pole attachment rates that rely on GAAP-based data will result in disparities and confusion involving attachment rates on poles jointly-owned with the EDCs, could disrupt existing agreements, and could result in unintended cost increases.

Although the DPU suggested this issue in its prior comments,⁴⁸ the DTC does not explicitly address potential complications involving jointly-owned poles. The DTC's proposed Report, however, includes a line item for telecommunications pole owners to report the number of pole equivalents but does not define pole equivalents.⁴⁹ For ILECs reporting pole data to the FCC, the FCC's reporting instructions define the equivalent number of poles as the number of solely-owned poles plus the sum of the products of the numbers of jointly-owned poles times their ownership percentages and, where the ownership percentage

⁴⁸ See Att. D at 4 ("it is not appropriate to have a pole attachment regulatory scheme where DTC-regulated and DPU-regulated entities calculate different pole attachment rates using different methods to establish pole costs, particularly where Verizon and the [EDCs] often jointly own the poles").

⁴⁹ Notice Exhibit at i.

is unknown, to assume 50 percent.⁵⁰ The FCC directs the exclusion of leased poles from this number.⁵¹

Based on publicly-available data, at least 1.4 million jointly-owned poles exist in the Commonwealth. In particular, Verizon states that it is the joint-owner of approximately 1.4 million utility poles in Massachusetts and, as of December 31, 2021, reports 699,804 pole equivalents in the state.⁵² NSTAR Electric d/b/a Eversource Energy (“NSTAR Electric”) has identified 495,132 pole attachments on jointly-owned poles and 100,729 pole attachments on solely-owned poles as of June 30, 2016, in its Massachusetts service territories.⁵³ In its most recent base distribution rate proceeding, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid”) reported 632,725 jointly-owned poles and 68,986 solely-owned poles as of 2017.⁵⁴ National Grid also reported 385,349 pole equivalents, calculated by adding its solely-owned poles to 50 percent of its jointly-owned poles ($68,986 + (632,725/2) = 385,349$).⁵⁵ Data reflects that most

⁵⁰ FCC Report 43-01 and Pole Attachment Data Report Definitions at 22 (February 2021, ed. 12/2016), available at <https://www.fcc.gov/economics-analytics/industry-analysis-division/armis/armis-instructions-data> (last viewed June 3, 2022) (“FCC Pole Attachment Data Report Definitions”).

⁵¹ FCC Pole Attachment Data Report Definitions at 22.

⁵² CRC Communications, LLC, D.T.C. 22-4, Verizon Response at 1 (filed May 12, 2022); Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, CC Docket No. 86-182, Verizon Annual ARMIS Summary Report for Massachusetts, line 601 (filed April 1, 2022) available at https://www.fcc.gov/ecfs/file/download/DOC-5ff95c4ecf400000-D.pdf?file_name=2022-04-01%20VZ%20ARMIS%202021%20Pole%20Attachment%20Data.pdf (last viewed June 3, 2022).

⁵³ D.P.U. 17-05, Exh. AG 51-17; RR-AG-26.

⁵⁴ Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-150, Exhs. AG 16-1, Att. at 6; AG 35-1.

⁵⁵ D.P.U. 18-150, Exh. AG 16-1, Att. at 6. Unitil recently came to a resolution with Verizon in its Massachusetts territory that involved the transfer of ownership of jointly-owned poles from Verizon to Unitil. D.P.U. 17-05, Order Establishing Eversource’s Revenue Requirement at 602 (citation omitted).

joint-owned poles in the Commonwealth remain between Verizon, the EDCs, and/or MLPs, although some utility poles are jointly-owned with other types of companies.⁵⁶

By virtue of this joint ownership history, the EDCs and Verizon have long been parties to negotiated joint ownership agreements that define the responsibilities and costs for maintenance, tree trimming and clearing, and storm-related vegetation management activities for jointly-owned utility poles.⁵⁷ Pole maintenance costs incurred during prior joint ownership agreements, however, have been the subject of civil suits and settlement agreements between the parties.⁵⁸ This is pertinent because costs incurred by the EDCs for pole maintenance may be eligible for recovery from their customers if certain conditions are met.⁵⁹ EDCs must also offset expenses, generally, with revenues received, including from pole attachments, to reduce the revenue requirement that is used to design their base distribution rates.⁶⁰ In order to ensure that a representative level is used as an offset to expenses, the DPU with limited exception adjusts test year pole attachment revenues on the basis of the test year-end number of attachments, as well as the test year-end pole attachment rates, all of which calculations rely on USOA-based data.⁶¹

⁵⁶ See D.T.E. 03-87, Verizon May 18, 2022 Double Pole Report, New Pole Summary tab; D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 57, 64.

⁵⁷ See Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-94, at 12, 15 (2020); D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 593-594; NSTAR Electric Company, D.P.U. 16-74, at 15 (2020); NSTAR Electric Company, D.P.U. 13-52, at 26-28, 44-46 (2013).

⁵⁸ See D.P.U. 18-94, at 13, 15-16; D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 594, 599-601; D.P.U. 16-74, at 16-18; D.P.U. 13-52, at 47-48.

⁵⁹ See D.P.U. 18-94, at 15, 17; D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 598-599; D.P.U. 16-74, at 17-18.

⁶⁰ See D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 64.

⁶¹ See D.P.U. 17-05, Order Establishing Eversource's Revenue Requirement at 64-68; Fitchburg Gas and Electric Light Company, D.P.U. 11-01/D.P.U. 11-02, at 167-168 (2011); D.P.U. 09-39, at 121.

As discussed in the prior section, to the extent the DTC permits Verizon to report only GAAP-based pole data, the DTC effectively permits Verizon to establish pole attachment rates based on GAAP inputs, which could result in future rate increases higher than those that would result from USOA-based inputs. Because Verizon jointly owns a substantial number of poles with the EDCs and MLPs, and the EDCs and MLPs subject to the DPU's jurisdiction continue to rely on USOA-based inputs for their reporting requirements with the DPU, the DTC's proposals, if adopted, would also effectively create a scenario whereby poles jointly owned by Verizon and the EDCs and/or MLPs would be subject to two systems of accounting on the same poles. In these instances, this creates not only a possible disparity between the attachment rates that could be charged by Verizon versus the rates that could be charged by the EDCs or MLPs, but also as it relates to the pole owners' bargaining power in negotiating joint ownership agreements and corresponding revisions. For attaching entities, this is also likely to create confusion as to what permissible pole attachment rates may be in the Commonwealth and result in pole attachment complaint filings that would otherwise be unnecessary if there was already a uniform, established process in place as there has been for the past several decades involving poles owned by Verizon, the EDCs, and MLPs. If the DTC takes an action that veers away from long-established practice, those actions could have unintended cost impacts necessitating a joint solution. For instance, these actions and potential rate increases also implicate the DPU's authority outlined under our Memorandum of Agreement ("MOA") involving future

communications complaints, because the attachments under dispute may involve costs relating to the electric smart grid or advanced metering.⁶²

Accordingly, for these reasons and to retain the status quo for the time being, the DPU reiterates our proposal that the DTC institute both GAAP- and USOA-based reporting for Verizon pole attachment and conduit data.

- D. Joint ownership of utility poles by Verizon, EDCs, and MLPs necessitates measured action for the type of pole data reported by Verizon, and the DPU looks forward to conducting a joint proceeding to address a uniform approach among pole owners.

In our prior comments, the DPU observed that implementation of the Massachusetts Formula for purposes of calculating pole attachment and conduit rates long relied on USOA-based inputs.⁶³ In addition, we observed that:

[t]o the extent that the DTC contemplates any change to the information relied upon in the application of the Massachusetts Formula, such modification would constitute a change in the policies or procedures applicable to pole attachments. Pursuant to ¶ 6 of the MOA, any changes to the regulations, policies, or procedures applicable to pole attachments must be jointly developed and promulgated by the DPU and the DTC and must be consistent with G.L. c. 166, § 25A. Pole owners and attachers that would be affected by any change to the rates calculated under the Massachusetts Formula include [EDCs], telecommunications carriers, municipalities, including [MLPs], fire and police departments, as well as cable [TV] providers, alarm companies, and others. As a result, any joint investigation pursuant to ¶ 6 of the MOA would require notice to ensure that all affected entities have the opportunity to participate.⁶⁴

⁶² MOA, ¶ 5; see also NSTAR Electric Company, D.P.U. 21-80, NSTAR Electric filing, ES-AMI-1, at 26; ES-AMI-2, at 15-17; ES-JAS-2, at 80-94; Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 21-81, National Grid filing, NG-GMP-2, at 48-49; NG-AMI-2, at 44-45; Fitchburg Gas and Electric Light Company, D.P.U. 21-82, Unitil 2022-2025 Grid Modernization Plan, at 27, 76-77.

⁶³ Att. A at 4; Att. D at 2.

⁶⁴ Att. A at 5.

The DTC determines that its proposals relating to Pole Owner Reports are not subject to the MOA between our agencies, and it declines to implement mitigation measures at this time to avoid potential rate shock absent actual rate shock.⁶⁵ At the same time, the DTC concedes that it may need to consider the applicability of the MOA in any ex ante mitigation efforts and states that any such efforts may be outside the scope of the proceeding.⁶⁶ The DTC also states that a determination of whether or how it might use the data collected from the proposed Pole Owner Report to adjudicate a future pole attachment dispute or of the admissibility of data from other sources during a pole attachment complaint proceeding is beyond the scope of this proceeding.⁶⁷

As the DTC moves forward on establishing pole and conduit data reporting requirements for companies under its jurisdiction, however, the DPU recommends the DTC take a measured approach with Verizon and any similarly-situated ILECs that operate in Massachusetts and, for the reasons discussed above, implement both GAAP- and USOA-based reporting for these particular entities for at least the next decade to not only minimize future pole attachment rate disputes but also to ensure that both of our agencies can make informed decisions and recommendations involving those disputes. Additionally, the DPU reiterates that we support the DTC's decision to implement reporting requirements for companies under its jurisdiction. Further, we support the DTC's decision to institute a Pole Owner Report outside of a joint proceeding. The DPU looks forward to working with the

⁶⁵ Notice at 13 & n.8.

⁶⁶ Notice at n.11.

⁶⁷ Notice at 4.

DTC in conducting a joint proceeding at the appropriate time that would allow us to explore ways to uniformly address the inputs and calculations to be relied on by companies in calculating their pole attachment rates in Massachusetts, and to allow us to analyze potential implications broader than just pole attachment complaints brought under our shared regulations. This will also permit our agencies to consider, pursuant to G.L. c. 166, § 25A, not only the interests of subscribers of cable television (“TV”) and wireless telecommunications services, but also the interests of utility service consumers.

E. The DPU suggests revisions to the proposed Pole Owner Report and urges the DTC to post any filed Reports to its website.

The DTC requests input on its proposed Pole Owner Report for telecommunications pole owners and the proposed March 1 filing deadline.⁶⁸ The DTC also seeks comment on its proposal to make the Reports publicly available and to provide copies of such documents upon request.⁶⁹ In response, the DPU offers the following recommendations.

As a preliminary matter, the DPU recommends that, because this will be a new reporting requirement, any final Pole Owner Report adopted by the DTC include line-item instructions and definitions, clearly identify the entities to whom the Report applies, and reflect the annual filing deadline. The proposed Report does not currently provide this clarity. The DPU also recommends that the DTC require reporting providers to identify the number of jointly-owned and solely-owned poles in their service area(s), in addition to pole equivalents. To the extent that the DTC adopts the definition of pole equivalents utilized by

⁶⁸ Notice at 1, 5-8.

⁶⁹ Notice at 14.

the FCC,⁷⁰ the additional detail involving jointly-owned and solely-owned poles will help to guide interested parties in determining how the figure is derived. Further, as discussed extensively in our prior comments and above, Verizon should be required to report both USOA- and GAAP-based data for at least the next decade. As a result, the DPU recommends that the DTC implement a Pole Owner Report specific to Verizon that would capture both sets of information.

To the extent the DTC imposes reporting requirements on carriers other than Verizon, the DPU suggests that the DTC require those carriers to identify the towns where they own utility poles and conduit and to confirm if they are enrolled in the National Joint Utilities Notification System (“NJUNS”). Verizon, EDCs, MLPs, and several other pole owners and attachers in Massachusetts already utilize NJUNS for purposes of pole transfer notifications.⁷¹ Verizon and the EDCs also rely on NJUNS data for purposes of double-pole reporting to the DTC and the DPU.⁷²

Further, the DPU reiterates its recommendation that the DTC incorporate the Report into the annual return form filed by telecommunications carriers to the DTC.⁷³ Annual return filings are required by statute, and the Legislature granted to the DTC the authority to establish the form of the annual returns.⁷⁴ Since telecommunications annual return filings are

⁷⁰ See supra at 13-14 and n.50; see also FCC Pole Attachment Data Report Definitions at 22.

⁷¹ See NJUNS’ Massachusetts Member Codes webpage available at <https://app2.njuns.com/forms/publicmemberlist?state=Massachusetts> (last viewed June 3, 2022).

⁷² See D.T.E. 03-87, National Grid Semi-Annual Double Pole Report at 2 (May 27, 2022); D.T.E. 03-87, NSTAR Electric Semi-Annual Double Pole Report at 2 (May 18, 2022).

⁷³ Att. C, at 2-3.

⁷⁴ G.L. c. 159, § 32; G.L. c. 166, § 11.

due annually by March 31 for operating data through the prior calendar year, the DPU suggests that the DTC also establish March 31 as the Pole Owner Report filing deadline. To the extent that the DTC anticipates taking steps in the future to expand its proposed Report filing requirements to cable TV providers that own conduit and utility poles, the DPU suggests that the Report align with any annual filing deadlines that those providers may already have with the DTC.

Finally, rather than await requests for data, the DPU recommends that the DTC post on its website the Pole Owner Reports filings by year. Posting the data to the DTC's website will make that data more accessible to attachers and other interested parties and be consistent with practices already in place with other regulatory agencies. For instance, the DPU posts annual returns submitted to us on our website, and the FCC posts carrier-specific ILEC pole data to its online ECFS.

III. CONCLUSION

The DPU appreciates the opportunity to provide these comments and the DTC's consideration, and we respectfully request that the DTC implement the DPU's recommendations identified herein.

Respectfully submitted,

DEPARTMENT OF PUBLIC UTILITIES

By its attorney

/s/ Kerri DeYoung Phillips
Kerri DeYoung Phillips, Counsel

Legal Division
One South Station, Fifth Floor
Boston, MA 02110
kerri.phillips@mass.gov

Dated: June 3, 2022